

CONSTRUCTION MANAGER/GENERAL CONTRACTOR

**PROCUREMENT MANUAL FOR CM/GC's AND DFCM
PROGRAM DIRECTORS MANAGING CM/GC PROJECTS:**

July 13, 2005

(Subject to review and comments)

**Issued by the Division of Facilities Construction and Management to
assist Construction Manager/General Contractors in fulfilling their
procurement requirements under Utah law.**

GENERAL INSTRUCTIONS

GOAL OF PROCUREMENT:

The goal of procurement should be to treat all persons fairly and equally, streamline procurement activities and have effective broad-based competition. DFCM wants the best value for its projects in order that projects for construction on-time, on-budget, high quality and safely constructed.

PROCURE USING CERTAIN METHODS AS IF IN DFCM'S POSITION

State law requires that “the Construction Manager/General Contractor shall procure its first tier subcontractors using one of the source selection methods provided for in the Utah Procurement Code, Part 4, Source Selections and Contract Formation, in the same manner as if the subcontract work was procured directly by the State.” [UCA 63-56-501 (2) (b) ii] This means that the first tier subcontractors must be procured using one of the following procurement methods: (1) “low” bid; (2) request for proposal; (3) small purchases; (4) sole source; or (5) emergency procurement.

BID VERSUS PROPOSAL.

Due to ordinary construction practices, these words sometimes get used as if they are the same. HOWEVER, under the State of Utah procurement system there is a difference:

BID – is generally used when it is a low bid (lowest responsible and responsive bidder) procurement.

PROPOSAL – is generally used when a Request for Proposals with a selection committee is used.

ETHICAL VALUES.

While we know you are a firm that was selected due your qualifications, we have to advise you that the procurement code defines certain illegal activities. Please be aware that neither your firm or the people seeking to contract with your firm, should be involved in any practice of bribes, gifts and the like in an attempt to benefit from the procurement process. We know and expect your firm to operate with integrity and the best of values in proceeding with the procurement processes.

RESPONSIBILITY FOR SUBCONTRACTORS AND SUPPLIERS.

While DFCM may receive forms and information regarding subcontractors, unless the DFCM specifically directs the hiring of a specific subcontractor, not merely a disqualification of a subcontractor, the CM/GC is fully responsible for the performance of all its subcontractors and suppliers at any tier.

QUESTIONS?

If the CM/GC has any questions regarding the procurement processes, the CM/GC shall promptly notify the DFCM Representative.

LOW BID PROCUREMENT PROCESS:
LOWEST RESPONSIBLE AND RESPONSIVE BIDDER.

The required elements of this process are outlined below:

1. Prepare an invitation for bids. The CM/GC shall prepare the Invitation for Bids.
SEE SAMPLE FORM OF AN INVITATION TO BID, ATTACHED.

2. Notification: Public Notice of Invitations For Bids.

(a) Public notice of Invitations For Bids shall be publicized as follows:

- Publicize it on the CM/GC's website after the CM/GC has arranged for the DFCM website to direct firms to the CM/GC's website.
- Any of the following methods may be used in addition to the website notice:
 - (i) In a newspaper having general circulation in the area in which the project is located;
 - (ii) In appropriate trade publications; or in a newspaper having general circulation in the state; or
 - (iii) or by any other method deemed appropriate by the DFCM Representative.

(b) A copy of the public notice shall be available for public inspection at the principal office of the CM/GC.

3. Public Notice for Invitation for Bids. The public notice of the Invitation For Bids shall include the following:

- (a) The closing time and date for the submission of bids;
- (b) The location to which bids are to be delivered (please be specific as to the exact location within your office);
- (c) Directions for obtaining the bidding documents;
- (d) A brief description of the project; and
- (e) Notice of any mandatory pre-bid meetings

4. Content of Invitation for Bid. The Invitation for Bids shall include a purchase description and all contractual terms and conditions applicable to the procurement.

5. Minimum time to receive bids. The "Bidding Time" is the period of time between the date of the first publication of the public notice and the final date and time set for the receipt of bids by the CM/GC. The "Bidding Time" shall be set to provide bidders with a reasonable time to prepare their bids and shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular procurement as determined in writing by the CM/GC.

Bids shall be properly documented by the CM/GC as to the time of day (hour and minute) of receipt at the required location.

6. Open Publicly. Bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the invitation for bids. The names of the bidders and bid price must be either read aloud at the bid opening or otherwise made available to the public.

7. Record Names and Amounts. The amount of each bid together with the name of each bidder, shall be promptly put on a Bid Tabulation by the CM/GC. A copy shall be provided to the DFCM Representative and is open to public inspection.

A sample form entitled “Bid Tabulation: is attached.

8. Do Not Alter/Correct Bid Except as Provided Below: Bids shall be received without alteration or correction, except as provided below.

9. Pre-Opening Modification or Withdrawal of Bids.

(a) Bids may be modified or withdrawn by the bidder by written notice to the CM/GC prior to the time set for the opening of bids.

(b) Bid security, if any, shall be returned to the bidder when withdrawal of the bid is permitted.

(c) All documents relating to the modification or withdrawal of bids shall be maintained as part of the CM/GC’s project file.

10. Late Bids, Late Withdrawals, and Late Modifications not considered, unless it is only bid received. Any bid, withdrawal of bid, or modification of bid received after the time and date set for the submission of bids at the location designated in the notice shall be deemed to be late and shall not be considered, unless it is the only bid received in which case it may be considered.

11. Receipt, Opening, and Recording of Bids.

(a) Upon receipt, all bids and modifications shall be stored in a secure place until the time for bid opening.

(b) Bids and modifications shall be opened publicly, in the presence of one or more witnesses, at the time and place designated in the notice. The names of the bidders, the bid price, and other information deemed appropriate by the CM/GC shall be read aloud. After the bid opening, the Bid Tabulation shall be prepared by the CM/GC with a copy promptly delivered to the DFCM Representative. The opened bids shall be available for public inspection.

12. Mistakes in Bids after bid opening.

(a) After the bid opening, mistakes in judgment may not be corrected. However, if it is clear to the CM/GC, the CM/GC may permit the withdrawal of the bid when the CM/GC believes that the bid is not responsive or responsible.

(b) After the bid opening, non-judgment forms of mistakes, may be corrected at the discretion of the CM/GC and only if it meeting the interests of the State of Utah and is still fair to the other bidders. These mistakes includes, but are limited to typos, mathematical errors on the face of the bid, failure to sign the bid or acknowledge receipt of addenda provided the subcontractor acknowledges being bound by such before or at the bid opening,

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(c) If the CM/GC believes from the “face of the bid” or a price that seems to low, the CM/GC may request written confirmation from the bidder. If it is confirmed by the bidder and the CM/GC still believes that the bid is not “responsible,” the CM/GC may still disqualify the bid.

(d) The CM/GC, after consultation with the DFCM Representative shall approve or deny in writing all requests to correct, withdraw, modify or disqualify a bid.

(e) The CM/GC shall keep the DFCM Representative informed of all requests to correct, withdraw, modify or disqualify a bid.

13. Bid Evaluation and Award.

(a) Contract shall be awarded promptly to the lowest responsible and responsive bidder who meets the requirements of the invitation for bids **for a specific scope of work**. An exception is when a reciprocal preference under the Utah Procurement Code applies. Contact the DFCM Representative if such a preference has been requested.

(b) Only criteria in the invitation for bids shall apply.

(c) Promptly provide a written notice to the DFCM Representative.

14. Cancellation of Invitations For Bids; Rejection Of Bids in Whole or In Part.

(a) Cancel Invitation or Reject All Bids: The CM/GC may cancel the invitation for bids or reject all bids, when in the interest of the State of Utah. The reason shall be stated in writing and a copy provided to the DFCM Representative.

(b) Determine Nonresponsibility or Nonresponsiveness of Bidder. The CM/GC may determine that the bid is nonresponsive to the invitation forbids or that the bid is “nonresponsible” based on the criteria of the Project. Any failure of a bidder to promptly supply information regarding responsible, is grounds for the CM/GC to determine nonresponsibility.

(1) If a bidder is found to be nonresponsive or nonresponsible, the CM/GC shall provide a written notice to the bidder with a copy to the DFCM Representative.

(2) Any information furnished by a bidder pursuant to an inquiry to determine “responsibility” shall be classified as a protected record under the Utah Governmental Records and Access Management Act and shall not be disclosed to the public by the CM’GC or DFM without the prior written consent of the bidder.

(15) Tie Bids.

(a) Definition. Tie bids are low responsive bids from responsible bidders that are identical in price.

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(b) Award. Award shall be determined through a coin toss or the drawing of lots as determined by the CM/GC. The coin toss or drawing of lots shall be open to the public, including the bidders who submitted the tie bids.

(c) Record. Documentation of the tie bids and the procedure used to resolve the award of the contract shall be placed in the contract file with a copy to the DFCM Representative.

SAMPLE FORMS FOR THE BID PROCESS FOLLOW. WHILE THE CM/GC IS NOT OBLIGATED TO USE ALL OR PART OF THE SAMPLE FORM, THE REQUIRED CONTENTS DESCRIBED ABOVE MUST BE IN YOUR FORMS. THESE FORMS ARE PROVIDED FOR ILLUSTRATIVE PURPOSES.

INVITATION TO BID (SAMPLE FORM)

Sealed bids will be received by the Construction Manager/General Contractor (CM/GC) under contract with the Division of Facilities Construction and Management (DFCM) for the following DFCM Project No. _____ : _____

_____. (BRIEFLY DESCRIBE SCOPE OF WORK ABOVE.)

Bid Documents including terms and conditions of the contract may be obtained as follows:

_____ The DFCM

General Conditions dated May 25, 2005 as it applies to Subcontractors shall be applicable.

For any questions regarding obtaining the Bid Documents, contact the CM/GC immediately at _____ (insert contact person and telephone #.) Other than the CM/GC and DFCM, no others are to be contacted regarding this bidding process. The construction budget for this scope of work is \$_____.

(Optional Paragraph: A mandatory pre-bid meeting is being held at _____ at the following time: _____. All bidders desiring to bid on this project are required to attend this meeting.)

(Any requirement for a bid bond of 5% of the contract amount is stated here: _____)

Any required payment/performance bonds shall be stated here: _____)

Bids will be received until the hour of _____ p.m. on _____ at the following specific location in the office of the CM/GC at the following address:

_____.

NOTE: Bids must be received at the following specified location by the specified time or the bid will not be accepted: _____ (insert location)

The CM/GC reserves the right to reject any or all bids or to waive any formality or technicality in any bid in the interest of the State of Utah.

AWARD: The contract shall be awarded by written notice to the lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth in this invitation for bids. An exception occurs where the requirements of a special preference applies under the Utah Procurement Code.

CM/GC: _____

Address: _____

Telephone: _____

BID TABULATION *(sample form)*

Construction Manager/General Contractor (CM/GC): _____

DFCM Project No. _____

Scope of Work: _____

On the date of publicly opening the bids, the following bidders and amounts were submitted to the CM/GC:

NAME OF BIDDER	Utah License #	Amount of Bid
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

This document shall be kept on file at the office of the CM/GC and a copy shall be promptly provided to the DFCM Representative and is available for public inspection.

BID FORM (*sample form*)

NAME OF BIDDER: _____ License # _____ Date: _____

To the Construction Manager/General Contractor: _____

Address: _____

The undersigned, in compliance and responsive to the "Invitation for Bids" and having examined the Contract Documents and the site of the proposed Work and being familiar with all of the conditions surrounding the construction of the proposed scope of work, including the availability of labor, hereby proposes to furnish all labor, materials and supplies as specified and within the time set forth and at the price stated below. This price is to cover all expenses incurred in performing the Work required under the Contract Documents of which this bid is a part:

I/We acknowledge receipt of the following Addenda: _____

For said scope of work, I/we agree to perform for the sum of: _____
Dollars (\$ _____) (In case of discrepancy, written amount shall govern)

I/We guarantee that the Work will be Substantially Complete within _____ calendar days after receipt of the Notice to Proceed, should I/we be the successful bidder, and agree to pay liquidated damages in the amount of \$ _____ per day for each day after expiration of the Contract Time as stated in the Agreement between the CM/GC and the Subcontractor.

This bid shall be good for _____ days after bid opening. Upon receipt of notice of award of this bid, the undersigned agrees to execute the contract within _____ days, and only if required by the Invitation to Bids, to deliver any Performance and Payment bonds in the amount of 100% of the Contract Sum for faithful performance of the contract.

I/We understand that Utah law applies to this procurement process. Any protest regarding the contents or procedures used for the invitation for bids must be filed in writing with the CM/GC prior to the time set for opening of bids. Any other protest regarding the award of the contract must be filed with the CM/GC within five working days of when the protester knows or should have known about the grounds for the protest. The protest will be processed by the CM/GC and the DFCM in accordance with the Utah Procurement Code.

Type of Organization:

(Corporation, Partnership, Individual, etc.)

Any request and information related to Utah Preference Laws:

Respectfully submitted,

Name of Bidder

ADDRESS:

RFP PROCESS (Request for Proposals) **General Description**

The required elements of this process are outlined below:

1. DECISION TO USE RFP PROCESS. The CM/GC should use the RFP process when the “low bid: process is not desirable and the RFP process is advantageous to the State of Utah. By issuing the written RFP, the CM/GC has determined that it is the best process that meets these standards.

2. PUBLIC NOTICE.

(a) The Public Notice to Subcontractors in the RFP process shall be as follows:

- Publicize it on the CM/GC’s website after the CM/GC has arranged for the DFCM website to direct firms to the CM/GC’s website.
- Any of the following methods may be used in addition to the website notice:
 - (i) In a newspaper having general circulation in the area in which the project is located;
 - (ii) In appropriate trade publications; or in a newspaper having general circulation in the State; or
 - (iii) or by any other method deemed appropriate by the DFCM Representative.

(b) A copy of the public notice shall be available for public inspection at the principal office of the CM/GC.

3. Content of the Public Notice: The public notice of the Request for Proposals (Notice to Subcontractors) shall include the following:

- (a) The closing time and date for the submission of proposals or any prior submittals;
- (b) The location to which proposals are to be delivered (please be specific as to the exact location within your office);
- (c) Directions for obtaining the RFP documents;
- (d) A brief description of the project; and
- (e) Notice of any mandatory pre-proposal meetings

4. PROPOSAL TIME. The Proposal time is the period of time between the date of the first publication of the public notice and the final date and time set for the first receipt of information, any mandatory pre-proposal meeting or receipt of proposals by the CM/GC, whichever is earlier. The Proposal time shall be set to provide proposers with reasonable time to prepare their proposals and shall be not less than ten calendar days, unless a shorter time is deemed necessary for a particular project as determined in writing by the CM/GC.

5. ADDENDA. Addenda to the requests for proposals may be made in the same manner provided for addenda to the bidding documents in connection with Invitations for Bids.

6. RECEIPT AND REGISTRATION OF PROPOSALS. After the date established for the first receipt of proposals or other required information, an Initial Proposal List shall be prepared and open to public inspection at the office of the CM/GC. A sample form of an Initial Proposal List is attached. Upon request, a copy of this form shall be sent promptly to the DFCM Representative. Any review or comments by the DFCM Representative regarding the list, does not alleviate the liability of the CM/GC for the performance of selected subcontractors or suppliers at any tier.

7. RESTRICTIONS ON DISCLOSURE PRIOR TO AWARD: Prior to award, proposals and modifications shall be shown only to the CM/GC, procurement and other officials involved with the review and selection of proposals. Proposals shall be opened so as to avoid disclosure of contents to competing offerors during the process of negotiation.

8. RESTRICTIONS ON DISCLOSURE AFTER AWARD. Except for certain confidential, trade secrets or proprietary information, proposals of the successful offeror shall be open to public inspection after award of the contract. Proposals of offerors who are not awarded contracts shall not be open to public inspection although the amount of each offeror's cost proposal shall be disclosed after the contract is awarded. A register of proposals, including the amount of each offeror's cost proposal shall be prepared after the award and shall be open for public inspection after the contract is awarded. A sample form of this Final Registry of Proposals is attached and shall be maintained by the CM/GC with a copy promptly delivered to the DFCM Representative.

9. CERTAIN CONFIDENTIAL INFORMATION. The Request for Proposals may provide that certain information required to be submitted by the proposer shall be considered confidential and classified as protected if such information meets the provisions of Section 63-2-304 of the Government Records Access and Management Act.

The ranking of the unsuccessful firms and every firm's past performance submissions are confidential and such information shall only be disclosed to those persons involved with the performance review and selection, the subcontractor whose information it relates to, and other procurement persons. However, the DFCM may provide reference information to other parties when requested by the Subcontractor that is the subject of the information.

10. NON-DISCLOSURE OR TRADE SECRETS AND PROPRIETARY DATA. If the proposer selected for award has requested in writing the non-disclosure of trade secrets and other proprietary data so identified, the CM/GC and DFCM Representative shall examine the request to determine its validity prior to award of the contract. If the parties do not agree as to the disclosure of data in the contract, the CM/GC shall inform the proposer in writing what portion of the proposal will be disclosed and that, unless the proposer withdraws the proposal, it will be disclosed.

11 RFP INDICATE FACTORS. The request for proposals shall state all of the evaluation factors and the relative importance of price and other evaluation factors.

12 MODIFICATION OR WITHDRAWAL OF PROPOSALS. Proposals may be modified prior to the due dates established in the Request for Proposals. Proposals may be withdrawn until the notice of selection is issued.

13 LATE PROPOSALS, AND LATE MODIFICATIONS. Except for modifications allowed pursuant to negotiation, any proposal, or modification received at the location designated for receipt of proposals after the deadline established in the Public Notice (Notice to Subcontractors) shall be deemed to be late and shall not be considered unless there are no other proposals submitted.

14. EVALUATION AND AWARD: Award shall be made to the responsible proposer, whose proposal for a specific scope of work is determined in writing to be the most advantageous to the state, taking into consideration price and the evaluation factors set forth in the request for proposals.

(a) The evaluation of proposals shall be conducted by an evaluation committee appointed by the CM/GC. The DFCM Representative may recommend committee members for the CM/GC's consideration. The CM/GC shall have the appropriate number of persons on the committee based on the magnitude of the scope of work. The DFCM Representative is always permitted to be a member of such a committee. Each committee member shall certify as to his/her lack of conflicts of interest. A sample form for this certification is attached.

(b) The evaluation shall be based on the evaluation factors set forth in the request for proposals. Numerical Rating systems in accordance with the RFP shall be used. ~~may be used but are not required.~~ Factors or criteria not specified in the request for proposals shall not be considered.

(c) Proposals may be initially classified as potentially acceptable or unacceptable. Proposers whose proposals are unacceptable shall be so notified by the CM/GC, in writing and they may not continue to participate in the selection process.

(d) This classification of proposals may occur at any time during the selection process once sufficient information is received to consider the potential acceptability of the proposal.

(e) The request for proposals may provide for a limited number of proposers who may be classified as potentially acceptable. In this case, the proposers considered to be most acceptable, up to the number of proposals allowed, shall be considered acceptable.

(f) Proposal Discussions with Individual Proposers. Unless only one proposal is received, proposal discussions with individual proposers, if held, shall be conducted with no less than the proposers submitting the two best proposals. Discussions are held for the purpose of assuring full understanding of, and responsiveness to, the RFP requirements; and to facilitate arriving at a contract that will be most advantageous to the State of Utah taking into consideration price and the other evaluation factors set forth in the RFP.

(g) Proposers shall be accorded fair and equal treatment with respect to any opportunity for discussions. In conducting discussions, there shall be no disclosure of any information derived from proposals submitted by competing proposers. Any oral clarification or change of a proposal shall be reduced to writing by the proposer.

15. WITHDRAWALS AND MODIFICATIONS. Until the notice of selection is issued, a proposal may be withdrawn. A proposal may be modified prior to the deadline established in the Public Notice. Bid (proposal) security, if any, shall be returned to the proposer when withdrawal of the proposal is permitted. All documents relating to the modification or withdrawal of the proposal shall be maintained as part of the CMGC's project file.

16. MISTAKES IN PROPOSALS AFTER THE DEADLINE FOR RECEIPT OF PROPOSALS.

(a) After the deadline for receipt of proposals, mistakes in judgment may not be corrected. However, if it is clear to the CM/GC, the CM/GC may permit the withdrawal of the proposal when the CM/GC believes that the proposal is not responsive or responsible.

(b) After the deadline for the receipt of proposals, non-judgment forms of mistakes may be corrected at the discretion of the CM/GC but only if it meets the interests of the State of Utah and is still fair to the other proposers. These mistakes include, but are not limited to typos, mathematical errors on the face of the proposal, failure to sign the proposal or acknowledge receipt of addenda provided the Subcontractor acknowledges being bound by such.

(c) If the CM/GC believes from a review of the proposal before award, that a mistake has been made, the proposer may be asked to confirm the proposal. Situations in which confirmation may be requested include obvious, apparent errors on the face of the proposal or a proposal amount that is substantially lower than the other proposals submitted. If the proposer alleges mistake, the proposal may be corrected or withdrawn as stated in 16 (b) above.

(d) **Mistakes discovered after award.** Proposers shall be bound to all terms, conditions and statements in the proposal after award of the contract.

(e) The CM/GC, after consultation with the DFCM Representative shall approve or deny in writing all requests to correct, withdraw, modify or disqualify a proposal.

(f) The CM/GC shall keep the DFCM Representative informed of all requests to correct, withdraw, modify or disqualify a proposal.

17. AWARD.

(a) **Award Documentation.** A written determination shall be made showing the basis on which the award was found to be most advantageous to the State based on the evaluation factors set forth in the Request for Proposals. This requirement may be satisfied through documentation of a scoring of the proposals including a written statement of justification explaining the award based on the evaluation factors and associated points as identified in the Request for Proposals. **PRIOR TO ISSUANCE OF THE NOTIFICATION OF AWARD OF THE CONTRACT, THE DFCM REPRESENTATIVE SHALL BE PROVIDED A COPY OF THE FINAL REGISTRY OF PROPOSALS FOR REVIEW AND COMMENTS.** Any review or comments by the DFCM Representative does not alleviate the liability of the CM/GC for the performance of selected subcontractors or suppliers at any tier.

(b) **One Proposal Received.** If only one proposal is received in response to a Request for Proposals, the CM/GC with concurrence of the DFCM Representative may, as they deem appropriate, make an award or resolicit for the purpose of obtaining additional competitive sealed proposals.

(c) **Publicizing Awards.** After a contract is entered into, notice of award shall be available in the principal office of the CM/GC. The contract file of the CM/GC shall contain the basis on which the award is made.

SAMPLES OF FORMS ARE ATTACHED. IF THERE ARE ANY QUESTIONS ABOUT THE FORMS, MODIFYING THE FORMS, NEEDING ADDITIONAL FORMS OR ASSISTANCE WITH THE SELECTION PROCESS, PLEASE WORK CLOSELY WITH THE DFCM REPRESENTATIVE. SAMPLES OF SCORE SHEETS FOR SELECTION COMMITTEE USE ARE AVAILABLE FROM THE DFCM REPRESENTATIVE AS WELL.

(NOTE: THIS IS A SAMPLE – YOU MAY USE YOUR OWN FORM THAT MEETS THE REQUIREMENTS)

Request for Proposals for Specified Scope of Work under Contract with Construction Manager/General Contractor:

(insert name of CM/GC)

Value Based Selection Method

(Date)

(Project Title)

DFCM Project No. (project number)

(Name of Design Firm)

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Any required Payment Bond

DFCM General Conditions dated May 25, 2005 as it applies to Subcontractors

Any special provisions or modifications for the subcontract.

TECHNICAL SPECIFICATIONS:

DRAWINGS:

NOTICE TO SUBCONTRACTORS (Sample)

The Construction Manager/General Contractor _____ under contract with the State of Utah - Division of Facilities Construction and Management (DFCM) is requesting proposals for the construction of the following scope of work:

DFCM PROJECT NO. _____

Construction cost is estimated at \$ _____.

The Request for Proposals (RFP) documents, including the selection requirements, the selection schedule, and construction documents will be available on _____ at the office of the CM/GC at the following address _____, telephone # _____ and on the CM/GC's web page at _____. For questions regarding this project, please contact _____, CM/GC (801) _____. No others are to be contacted regarding this project.

(Optional Paragraph: A mandatory pre-proposal meeting is being held at _____ at the following time: _____. All actual or prospective proposers desiring to have their proposal considered on this project are required to attend this meeting.)

Cost proposals must be submitted by 12:00 noon on _____ to the CM/GC at the specifically described location at the CM/GC's office at the following address: _____. Additional information, including a management plan and references, may be required as stated on the Project Schedule. Note: Submittals must be received at said location by the specified time or the proposal shall be disqualified, unless it is the only proposal submitted..

The subcontractor shall comply with and require all of its subcontractors to comply with the license laws as required by the State of Utah.

(Optional Paragraph: Any special bonding requirements are as follows: _____)

The CM/GC, with concurrence of the DFCM Representative, reserves the right to reject any or all proposals or to waive any formality or technicality in any proposal in the interest of the State.

CMGC _____

Contact Person: _____

Address: _____

Telephone: _____

SCOPE OF WORK *(sample form)*

(Include in this area a description of the project.)

Project Risk Factors

(Include in this area the risks that have been identified for the project)

INSTRUCTIONS FOR PROPOSAL (sample form)

1. Request for Proposal Documents

The Request for Proposal (RFP) documents consist of all of the documents listed in the Table of Contents and all said documents are incorporated in this RFP by reference.

2. Availability of Requests for Proposals

Copies of the applicable contract documents may be obtained as follows: _____

3. Requests for Information or Questions.

All requests for information or questions regarding this project shall be in writing and directed to:

_____ (CM/GC Representative)

Address: _____

E-mail: _____

Facsimile: (801) _____

If any person or entity contemplating submitting a proposal is in doubt as to the meaning of any part of the drawings, specifications, other contract documents or the scope of work, such person shall submit to the CM/GC a request for an interpretation thereof. Any interpretation of the proposed documents will be made only by addenda duly issued and a copy of such addenda will be mailed or delivered to each person or entity receiving a set of documents. The CM/GC, DFCM or the Consultant will not be responsible for any other explanations or interpretations of the proposed documents.

5. Any Important Schedule Information is provided below:

(note: If there is any mandatory pre-proposal meeting, indicate it in the schedule and advise that failure to attend precludes consideration of their proposal).

6. Submittal Due Dates and Times

All required submittals must be delivered to, and be received by, the CM/GC previous to the date and time indicated in the Notice to Subcontractors of the RFP. Submittals received after the specified time will not be accepted, unless it is the only submittal. Please allow adequate time for delivery. If using a courier service, the Subcontractor is responsible for ensuring that delivery will be made directly to the required location.

The CM/GC shall document the time (hour and minute) and date of receipt of each proposal.

7. Applicable law related to procurement process and protests. Utah law applies to this procurement process. Any protest regarding the contents or procedures used for this Request for Proposals must be filed in writing with the CM/GC prior to the time set for receipt of the proposals. Any other protest regarding the award of the contract must be filed with the CM/GC within five working days of when the protester knows or should have known about the grounds for the protest. The protest will be addressed by the CM/GC and the DFCM in accordance with the Utah Procurement Code.

8. Addendum: Addendum will be distributed as follows: _____.

Any Addenda issued prior to the submittal deadline shall become part of the Request for Proposals and any information required shall be in your proposal.

9. Product Approvals

Where reference is made to one or more proprietary products in the Contract Documents, but restrictive descriptive materials of one or more manufacturer(s) is referred to in the contract documents, the products of other manufacturers will be accepted, provided they equal or exceed the standards set forth in the drawings and specifications and are compatible with the intent and purpose of the design, subject to the written approval of the A/E. The A/E's written approval will be in an issued addendum. If the descriptive material is not restrictive, the products of other manufacturers specified will be accepted without prior approval provided they are compatible with the intent and purpose of the design as determined by the A/E.

10. Cost Proposal

Before submitting a proposal, each Subcontractor shall carefully examine the RFP; shall visit the site of the Work as appropriate; shall fully inform themselves as to all existing conditions and limitations; and shall include in the proposal the cost of all items required by the RFP. If the Subcontractor observes that portions of the Contract Documents are at variance with applicable laws, building codes, rules, regulations or contain obvious erroneous or uncoordinated information, the Subcontractor shall promptly notify the CM/GC and the necessary changes shall be accomplished by Addendum.

(Optional Paragraph: Any bond requirements are as follows: _____)

Cost Proposals will be accepted at the specified location as follows: _____.
Late proposals, unless it is the only one submitted, will be disqualified.

11. Time

Time is of the essence in regard to all the requirements of the contract documents. All plans, schedules, and the cost proposals are required to reflect the project construction time. Of particular interest and concern is the Subcontractor's ability to deliver the project within the construction time. Non-compliance with the schedule will not result in automatic disqualification; it will be evaluated by the selection committee in determining the final selection.

12. ANY OTHER SPECIAL REQUIREMENTS: (i.e. management plan; qualification requirements; special project requirements to be addressed, etc.):

13. Selection Committee

The following information about the membership of the Selection Committee is provided: _____

_____. The DFCM Representative may elect to be a member of the Selection Committee.

14. Interviews. (OPTIONAL: The following information regarding the interview process is provided: _____.)

15. Selection Criteria

The following selection criteria and weights for each criteria, all of which is related to the scope of work, is provided. (Note: Cost has to be one of the criteria. The ability of the Subcontractor to meet the construction time requirements must also be considered. Examples of other criteria may be the following: other scheduling issues, qualifications, experience, etc.) The firm that is ranked the highest will represent the best value for the state. The selection committee will consider all criteria in performing a comprehensive evaluation of the proposal. Weights have been assigned to each criteria in the form of points.

List of Criteria:

- A. Cost. _____ Points.
- B. Ability to meet Construction Time: _____ Points.
- C. _____: _____ Points
- D. _____: _____ Points
- E. _____: _____ Points

16. Award of Contract

The selection of the Subcontractor will be made by using the criteria above and will be issued by the CM/GC.

17. Licensure

The Subcontractor shall comply with and require all of its subcontractors to comply with the license laws as required by the State of Utah.

18. Financial Responsibility of Contractors, Subcontractors and Sub-subcontractors

Subcontractors shall respond promptly to any inquiry in writing by the CM/GC to any concern of financial responsibility of the Subcontractor or its subcontractors at any tier.

21. Right to Reject All Proposals

The CM/GC reserves the right to reject all proposals and shall promptly inform the proposers as well as the DFCM Representative.

COST PROPOSAL FORM *(sample)*

NAME OF PROPOSER _____ DATE _____

To the Construction Manager/General Contractor

(insert name of firm and address)

The undersigned, responsive to the "Notice to Subcontractors" and in accordance with the "Request for Proposals" for the _____ and having examined the Contract Documents and the site of the proposed Work and being familiar with all of the conditions surrounding the construction of the proposed Project, including the availability of labor, hereby proposes to furnish all labor, materials and supplies as required by the Contract Documents and within the time set forth and at the price stated below. This price is to cover all expenses incurred in performing the Work required under the Contract Documents of which this proposal is a part:

I/We acknowledge receipt of the following Addenda: _____

For all work shown on the Drawings and described in the Specifications and Contract Documents for the scope of work of this subcontract, I/we agree to perform for the sum of:

_____ DOLLARS (\$ _____)
(In case of discrepancy, written amount shall govern)

I/We guarantee that the Work will be Substantially Complete within _____ calendar days after receipt of the Notice to Proceed, should I/we be the successful proposer, and agree to pay liquidated damages in the amount of \$_____ per day for each day after expiration of the Contract Time as stated in Subcontractor's Agreement.

This proposal shall be good for _____ days after the deadline set for receipt of proposals.

The undersigned Contractor's License Number for Utah is _____.

(Insert any time completion requirements here: _____)

Type of Organization:

(Corporation, Partnership, Individual, etc.)

Any request and information related to Utah Preference Laws:

Respectfully submitted,

Name of Proposer

ADDRESS: _____

Authorized Signature

INITIAL PROPOSAL LIST
(Sample form for the CM/GC's records)

CM/GC: _____

DFCM Project Number: _____

Project Title: _____

Scope of Work for Subcontractor Selection:

TIME AND DATE PROPOSALS DUE: _____

SUBCONTRACTOR

LICENSE#

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

A copy of this form shall be kept on file at the Office of the CM/GC and a copy shall be promptly provided to the DFCM Representative upon request. The Subcontractor and CM/GC are solely responsible for assuring that the Subcontractor license requirements are met. Any review or comments by the DFCM Representative regarding the list, does not alleviate the liability of the CM/GC for the performance of selected subcontractors or suppliers at any tier.

This document is available for public inspection at the office of the CM/GC.

FINAL REGISTRY OF PROPOSALS (sample)

(To be made available to the public only after award of the contract.)

CM/GC: _____
DFCM Project Number: _____
Project Title: _____
Scope of Work for Subcontractor Selection:

Successful Subcontractor awarded the contract with the CM/GC is _____. Their license number is _____ and their cost proposal amount is _____. Other Subcontractors that submitted proposals and were considered for award are listed below:

SUBCONTRACTOR	LICENSE#
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

**THIS FORM SHALL BE REVIEWED BY THE DFCM REPRESENTATIVE
PRIOR TO THE ISSUANCE OF THE NOTIFICATION OF AWARD OF THE
CONTRACT.**

A copy of this form shall be kept on file at the Office of the CM/GC and a copy shall be promptly provided to the DFCM Representative. This document is available for public inspection. Only the successful proposal is available for public inspection.

CONFLICT OF INTEREST AND CONFIDENTIALITY STATEMENT

(Insert Project Description)

DFCM Project No. _____

I, _____, hereby affirm that as a member of the selection committee for the above-mentioned project, I will discharge my responsibility without bias towards any party.

I hereby affirm that, to the best of my knowledge, no conflict of interest exists as to any matter which will be entrusted in my participation as a selection committee member.

I hereby affirm that, to the best of my knowledge, I do not have any private interest that will be enhanced as a result of my participation as a selection committee member. I have no interest in any entity or firm that may benefit from my participation as a selection committee member. "Interest" means ownership by myself or any spouse or minor child of any of the following: outstanding capital stock of a corporation, interest, agency or employee relationship with any corporation or other business entity.

I hereby affirm that, to the best of my knowledge, I have no relative that will be appointed or selected as part of any firm or entity as a result of my participation as a selection committee member. "Relative" means a father, mother, husband, wife, son, daughter, sister, brother, uncle, aunt, nephew, niece, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, first cousin, member of my household or anyone anticipated to be any of the above stated.

I hereby affirm that there will be no unlawful discrimination involved in my participation as a selection committee member.

I hereby affirm that neither I nor any of my close relatives have a pecuniary interest in the project and that I have not been contacted by any firm or any person representing a firm that is vying for this project in an attempt to influence my vote.

I further agree that no confidential or selection information will be discussed or disseminated other than with parties and officials included in the selection process.

Signature: _____

Date: _____

CM/GC's USE OF SMALL PURCHASES, SOLE SOURCE OR EMERGENCY PROCUREMENT PROCESSES

SMALL PURCHASES

1. Procurements of \$50,000 or Less.
2. The CM/GC may make procurements of construction estimated to cost \$50,000 or less by soliciting at least two firms to submit written quotations. The award shall be made to the firm offering the lowest acceptable quotation.
3. The names of the persons submitting quotations and the date and amount of each quotation shall be recorded and maintained by the CM/GC and promptly provided to the DFCM Representative to be maintained as a public record by the Division.
4. If the CM/GC determines that other factors in addition to cost should be considered in a procurement of construction estimated to cost \$50,000 or less, the CM/GC shall solicit proposals from at least two firms. The award shall be made to the firm offering the best proposal as determined through application of the procedures provided for in Rule R23-1-15 of the Utah Administrative Code except that a public notice is not required and only invited firms may submit proposals.
5. Procurements of \$5,000 or Less. The CM/GC may make small purchases of construction of \$5,000 or less in any manner that the CM/GC shall deem to be adequate and reasonable. Documentation of such purchases shall be provided to the DFCM Representative.
6. Division of Procurements. Procurements shall not be divided in order to qualify for these "Small Purchase" processes.

SOLE SOURCE PROCUREMENTS (Circumstances justifying award of contract without competition.)

The CM/GC may use the “sole source” method of selection of supplies, services or construction when directed to do so in the specifications (Contract Documents prepared by the A/E and approved by DFCM) or by the DFCM Director in accordance with applicable law.

1. General Statutory Requirements: ~~A contract may be awarded for a supply, service, or construction item without competition when the CM/GC in conjunction with the DFCM Representative determines in writing that:~~

~~(a) there is only one source for the required supply, service, or construction item;~~
~~or~~

~~(b) the award to a specific supplier, service provider, or contractor (subcontractor) is a condition of a donation that will fund the full cost of the supply, service, or construction item.~~

2. Examples. ~~Examples of circumstances which could also necessitate sole source procurement are:~~

~~(a) where the compatibility of product design, equipment, accessories, or replacement parts is the paramount consideration;~~

~~(b) where a sole supplier's item is needed for trial use or testing;~~

~~(c) procurement of public utility services;~~

~~(d) when it is a condition of a donation that will fund the full cost of the supply, material, equipment, service, or construction item.~~

3. Written Determination. ~~The determination as to whether a procurement shall be made as a sole source shall be made by the CM/GC and the DFCM Representative jointly in writing and may cover more than one procurement. In cases of reasonable doubt, competition shall be solicited.~~

4. Negotiation in Sole Source Procurement. ~~The CM/GC shall negotiate with the sole source vendor for considerations of price, delivery, and other terms.~~

EMERGENCY PROCUREMENTS

1. Application. This section shall apply to every procurement of construction made under emergency conditions that will not permit other source selection methods to be used.

2. Definition of Emergency Conditions. An emergency condition is a situation which creates a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, natural disasters, wars, destruction of property, building or equipment failures, or any emergency proclaimed by governmental authorities.

3. Scope of Emergency Procurements. Emergency procurements shall be limited to only those construction items necessary to meet the emergency. Emergency procurements shall be made with as much competition as practicable under the circumstances.

4. Authority to Make Emergency Procurements.

(a) The CM/GC in conjunction with the DFCM Representative may use an emergency procurement when an emergency condition exists or will exist and the need cannot be met through other procurement methods.

(b) **When used as a result of unsuccessful bid/proposal processes.** The procurement process shall be considered unsuccessful when all bids or proposals received pursuant to an Invitation For Bids or Request For Proposals are nonresponsive, unreasonable, noncompetitive, or exceed available funds as certified by the appropriate fiscal officer, and time or other circumstances will not permit the delay required to resolicit competitive sealed bids or proposals. If emergency conditions exist after or are brought about by an unsuccessful procurement process, an emergency procurement may be made as determined by the CM/GC in conjunction with the DFCM Representative.

5. Source Selection Methods. The source selection method used for emergency procurement shall be selected by the CM/GC in conjunction with the DFCM Representative with a view to assuring that the required services of construction items are procured in time to meet the emergency. Given this constraint, as much competition as the CM/GC and the DFCM Representative determine to be practicable shall be obtained.

6. Specifications. The CM/GC may use any appropriate specifications without being subject to the requirements of Rule R23-1-55 of the Utah Administrative Code.

7. Written Determination. The CM/GC in conjunction with the DFCM Representative shall make a written determination stating the basis for each emergency procurement and for the selection of the particular source (subcontractor). This determination shall be included in the project file at DFCM.

MISCELLANEOUS PROVISIONS

State Statute UCA 63-56-403. Procurement -- Use of recycled goods.

The procurement officer or other person responsible for purchasing supplies for each public procurement unit shall:

- (1) comply with Section 63-56-406; and
- (2) (a) maintain for reference a copy of the current listing of recycled items available on state contract as issued by the chief procurement officer under Section 63-56-204; and
- (b) give recycled items consideration when inviting bids and purchasing supplies.

State Statute UCA 63-56-404. Preference for providers of state products. (NOTE: Applies to bids only)

(1) (a) All public procurement units shall, in all purchases of goods, supplies, equipment, materials, and printing, give a reciprocal preference to those bidders offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in Utah as against those bidders offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in any state that gives or requires a preference to goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in that state.

(b) The amount of reciprocal preference shall be equal to the amount of the preference applied by the other state for that particular good, supply, equipment, material, or printing.

(c) (i) The bidder shall certify on the bid that the goods, supplies, equipment, materials, or printing offered are produced, manufactured, mined, grown, or performed in Utah.

(ii) The reciprocal preference is waived if that certification does not appear on the bid.

(2) (a) If the bidder submitting the lowest responsive and responsible bid offers goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in a state that gives or requires a preference, and if another bidder has submitted a responsive and responsible bid offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the reciprocal preference, his bid is equal to or less than the original lowest bid, the procurement officer shall:

(i) give notice to the bidder offering goods, supplies, equipment, materials, or printing produced, manufactured, mined, grown, or performed in Utah that he qualifies as a preferred bidder; and

(ii) make the purchase from the preferred bidder if, within 72 hours after notification to him that he is a preferred bidder, he agrees, in writing, to meet the low bid.

(b) The procurement officer shall include the exact price submitted by the lowest bidder in the notice he submits to the preferred bidder.

(c) The procurement officer may not enter into a contract with any other bidder for the purchase until 72 hours have elapsed after notification to the preferred bidder.

(3) (a) If there is more than one preferred bidder, the procurement officer shall award the contract to the willing preferred bidder who was the lowest preferred bidder originally.

(b) If there were two or more equally low preferred bidders, the procurement officer shall comply with the rules adopted by the Procurement Policy Board to determine which bidder should be awarded the contract.

(4) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

State Statute UCA 63-56-405. Preference for resident contractors. (Bids only)

(1) As used in this section, "resident contractor" means a person, partnership, corporation, or other business entity that:

(a) either has its principal place of business in Utah or that employs workers who are residents of this state when available; and

(b) was transacting business on the date when bids for the public contract were first solicited.

(2) (a) When awarding contracts for construction, a public procurement unit shall grant a resident contractor a reciprocal preference as against a nonresident contractor from any state that gives or requires a preference to contractors from that state.

(b) The amount of the reciprocal preference shall be equal to the amount of the preference applied by the state of the nonresident contractor.

(3) (a) The bidder shall certify on the bid that he qualifies as a resident contractor.

(b) The reciprocal preference is waived if that certification does not appear on the bid.

(4) (a) If the contractor submitting the lowest responsive and responsible bid is not a resident contractor and has his principal place of business in any state that gives or requires a preference to contractors from that state, and if a resident contractor has also submitted a responsive and responsible bid, and, with the benefit of the reciprocal preference, the resident contractor's bid is equal to or less than the original lowest bid, the procurement officer shall:

(i) give notice to the resident contractor that he qualifies as a preferred resident contractor; and

(ii) issue the contract to the resident contractor if, within 72 hours after notification to him that he is a preferred resident contractor, he agrees, in writing, to meet the low bid.

(b) The procurement officer shall include the exact price submitted by the lowest bidder in the notice he submits to the preferred resident contractor.

(c) The procurement officer may not enter into a contract with any other bidder for the construction until 72 hours have elapsed after notification to the preferred resident contractor.

(5) (a) If there is more than one preferred resident contractor, the procurement officer shall award the contract to the willing preferred resident contractor who was the lowest preferred resident contractor originally.

(b) If there were two or more equally low preferred resident contractors, the procurement officer shall comply with the rules adopted by the Procurement Policy Board to determine which bidder should be awarded the contract.

(6) The provisions of this section do not apply if application of this section might jeopardize the receipt of federal funds.

STATE STATUTE 63-56-412. (was 63-56-25) Cancellation and rejection of bids.

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected, in whole or in part, as may be specified in the solicitation, when it is in the best interests of the state in accordance with **rules and regulations**. The reasons shall be made part of the contract file.

STATE STATUTE UCA 63-56-413. Determination of nonresponsibility of bidder.

A written determination of nonresponsibility of a bidder or offeror shall be made in accordance with **rules** and regulations. The unreasonable failure of a bidder or offeror to promptly supply information in connection with an inquiry with respect to responsibility may be

grounds for a determination of nonresponsibility with respect to the bidder or offeror. Information furnished by a bidder or offeror pursuant to this section shall not be disclosed outside of the purchasing division or the purchasing agency without prior written consent by the bidder or offeror.

STATE STATUTE UCA 63-56-416. (was 63-56-29) Cost-plus-a-percentage-of-cost contract prohibited.

(1) Subject to the limitations of this section, any type of contract which will promote the best interests of the state may be used; provided that the use of a cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the state than any other type or that it is impracticable to obtain the supplies, services, or construction required except under such a contract.

(2) Except with respect to firm fixed-price contracts, no contract type shall be used unless it has been determined in writing by the chief procurement officer, the head of a purchasing agency, or a designee of either officer that:

(a) the proposed contractor's accounting system will permit timely development of all necessary cost data in the form required by the specific contract type contemplated; and

(b) the proposed contractor's accounting system is adequate to allocate costs in accordance with generally accepted accounting principles.

STATE STATUTE UCA 63-56-417. (was 63-56-30) Period of time for contract of supplies.

(1) Unless otherwise provided by law, a contract for supplies or services may be entered into for any period of time considered to be in the best interests of the state; provided that the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds.

(2) Prior to the utilization of a multiyear contract, it shall be determined in writing that estimated requirements cover the period of the contract and are reasonably firm and continuing and that such a contract will serve the best interests of the state by encouraging effective competition or otherwise promoting economies in state procurement.

(3) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled and the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the supplies or services delivered under the contract. The cost of cancellation may be paid from any appropriations available for that purpose.

STATE STATUTE UCA 63-56-418. Right of state to inspect place of business of contractor or subcontractor.

The state may, at reasonable times, inspect the part of the plant or place of business of a contractor or any subcontractor which is related to the performance of any contract awarded or to be awarded by the state.

STATE STATUTE UCA 63-56-419. Determinations final except when arbitrary and capricious.

The determinations required by Subsections 63-56-401(6), 63-56-408(1) and (6), Sections 63-56-410, 63-56-411, 63-56-413, Subsection 63-56-415(4), Section 63-56-416, and Subsection 63-56-417(2) are final and conclusive unless they are arbitrary and capricious or clearly erroneous.

STATE STATUTE UCA 63-56-420. (was 63-56-33) Factual information to attorney general if collusion suspected.

When for any reason collusion or other anticompetitive practices are suspected among bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general.

STATE STATUTE UCA 63-56-421. Records of contracts made.

The chief procurement officer or the head of a purchasing agency shall maintain a record listing all contracts made under Section 63-56-410 or 63-56-411 and shall maintain the record in accordance with Title 63, Chapter 2, Government Records Access and Management Act. The record shall contain each contractor's name, the amount and type of each contract, and a listing of the supplies, services, or construction procured under each contract.

STATE STATUTE UCA 63-56-423. Purchase of prison industry goods.

(1) All public procurement units shall purchase goods and services produced by the Utah Correctional Industries Division as provided by this section, which is an exemption from this chapter. All political subdivisions of the state may purchase these goods and services and are encouraged to do so when feasible.

(2) By July 1 of each year, the director of the Utah Correctional Industries shall publish and distribute to all state agencies and interested political subdivisions a catalog of goods and services provided by the Correctional Industries Division. The catalog shall include a description and price of each item offered for sale. The catalog shall be updated and revised during the year as the director considers necessary.

(3) (a) State departments, agencies, and institutions may not purchase any goods or services provided by the Correctional Industries Division from any other source unless it has been determined in writing by the director of Correctional Industries and the state procurement officer or in the case of institutions of higher education, the institutional procurement officer, that purchase from the Correctional Industries Division is not feasible due to one of the following circumstances:

(i) the good or service offered by the division does not meet the reasonable requirements of the purchasing agency;

(ii) the good or service cannot be supplied within a reasonable time by the division; or

(iii) the cost of the good or service, including basic price, transportation costs, and other expenses of acquisition, is not competitive with the cost of procuring the item from another source.

(b) In cases of disagreement, the decision may be appealed to a board consisting of the director of the Department of Corrections, the director of Administrative Services, and a neutral third party agreed upon by the other two members or, in the case of institutions of higher education, the president of the involved institution shall make the final decision.

STATE STATUTE UCA 63-56-425. (was 63-56-35.8) Purchase from sheltered workshops. (Bids only)

(1) As used in this section, "sheltered workshop" means a nonprofit organization operated in the interest of severely disabled individuals that:

(a) is certified as a sheltered workshop or sheltered work activity center by the United States Department of Labor; or

(b) is a supported employment program approved by the Utah State Office of Rehabilitation if:

(i) the program has as its principal purpose the development of employment opportunities for individuals with severe disabilities; and

(ii) at least 75% of the program employees under the procurement contract in question have severe disabilities.

(2) Notwithstanding any provision in this chapter to the contrary, each public procurement unit shall purchase goods and services produced by a sheltered workshop if:

(a) the good or service offered for sale by a sheltered workshop reasonably conforms to the needs and specifications of the public procurement unit;

(b) the sheltered workshop can supply the good or service within a reasonable time;

(c) the price of the good or service is reasonably competitive with the cost of procuring the good or service from another source;

(d) the sheltered workshop has provided the public procurement unit with a written bid fairly identifying the good or service and naming its price; and

(e) (i) the sheltered workshop has its principal place of business in Utah;

(ii) the good was produced by the sheltered workshop in Utah; or

(iii) the service is provided by individuals, the majority of whom are domiciled in Utah.

(3) The cost of a good or service is considered reasonably competitive under Subsection (2)(c) if it is within 5% of the lowest responsive and responsible bid offer for that good or service.

(4) Each sheltered workshop shall certify on any bid it submits to a public procurement unit under this section that it is claiming a preference under this section.

(5) In the case of conflict between a purchase under this section and a purchase under Section 63-56-423, this section prevails.

DFCM Administrative Rule R23-1-45. Methods of Construction Contract Management. . . .

(d) Construction Manager/General Contractor. A construction manager/general contractor is a firm experienced in construction that provides professional services to evaluate and to implement drawings and specifications as they affect time, cost, and quality of construction and the ability to coordinate the construction of the project, including the administration of change orders. The Division may contract with the construction manager/general contractor early in a project to assist in the development of a cost effective design. The construction manager/general contractor will generally become the general contractor for the project and procure subcontract work at a later date. The procurement of a construction manager/general contractor

may be based, among other criteria, on proposals for a management fee which is either a lump sum or a percentage of construction costs with a guaranteed maximum cost. If the design is sufficiently developed prior to the selection of a construction manager/general contractor, the procurement may be based on proposals for a lump sum or guaranteed maximum cost for the construction of the project. The contract with the construction manager/general contractor may provide for a sharing of any savings which are achieved below the guaranteed maximum cost. When entering into any subcontract that was not specifically included in the Construction Manager/General Contractor's cost proposal submitted in the original procurement of the Construction Manager/General Contractor's services, the Construction Manager/General Contractor shall procure that subcontractor by using one of the source selection methods provided for in Sections 63-56-20 through 63-56-35.8 [NOTE – this reference should now be Part 4 of the Utah Procurement Code, Title 63, Chapter 56] in a similar manner as if the subcontract work was procured directly by the Division.

DFCM ADMINISTRATIVE RULE R23-1-55. Specifications.

(1) General Provisions.

(a) Purpose. The purpose of a specification is to serve as a basis for obtaining a supply or construction item adequate and suitable for the procuring agencies' needs and the requirements of the project, in a cost- effective manner, taking into account, the costs of ownership and operation as well as initial acquisition costs. Specifications shall permit maximum practicable competition consistent with this purpose. Specifications shall be drafted with the objective of clearly describing the procuring agencies' requirements.

(b) Preference for Commercially Available Products. Recognized, commercially-available products shall be procured wherever practicable. In developing specifications, accepted commercial standards shall be used and unique products shall be avoided, to the extent practicable.

(c) Nonrestrictiveness Requirements. All specifications shall be written in such a manner as to describe the requirements to be met, without having the effect of exclusively requiring a proprietary supply, or construction item, or procurement from a sole source, unless no other manner of description will suffice. In that event, a written determination shall be made that it is not practicable to use a less restrictive specification.

(2) Director's Responsibilities.

(a) The Director is responsible for the preparation of all specifications.

(b) The Division may enter into contracts with others to prepare construction specifications when there will not be a substantial conflict of interest. The Director shall retain the authority to approve all specifications.

(c) Whenever specifications are prepared by persons other than Division personnel, the contract for the preparation of specifications shall require the specification writer to adhere to the requirements of this section.

(3) Types of Specifications. The Director may use any method of specifying construction items which he considers to be in the best interest of the state including the following:

(a) By a performance specification stating the results to be achieved with the contractor choosing the means.

(b) By a prescriptive specification describing a means for achieving desired, but normally unstated, ends. Prescriptive specifications include the following:

(i) Descriptive specifications, providing a detailed written description of the required properties of a product and the workmanship required to fabricate, erect and install without using trade names; or

(ii) Proprietary specifications, identifying the desired product by using manufacturers, brand names, model or type designation or important characteristics. This is further divided into two classes:

(A) Sole Source, where a rigid standard is specified and there are no allowed substitutions due to the nature of the conditions to be met. This may only be used when very restrictive standards are necessary and there is only one proprietary product known that will meet the rigid standards needed. A sole source proprietary specification must be approved by the Director.

(B) Or Equal, which allows substitutions if properly approved.

(c) By a reference standard specification where documents or publications are incorporated by reference as though included in their entirety.

(d) By a nonrestrictive specification which may describe elements of prescriptive or performance specifications, or both, in order to describe the end result, thereby giving the contractor latitude in methods, materials, delivery, conditions, cost or other characteristics or considerations to be satisfied.

(4) Procedures for the Development of Specifications.

(a) Specifications may designate alternate supplies or construction items where two or more design, functional, or proprietary performance criteria will satisfactorily meet the procuring agencies' requirements.

(b) The specification shall contain a nontechnical section to include any solicitation or contract term or condition such as a requirement for the time and place of bid opening, time of delivery, payment, liquidated damages, and similar contract matters.

(c) Use of Proprietary Specifications.

(i) The Director shall seek to designate three brands as a standard reference and shall state that substantially equivalent products to those designated will be considered for award, with particular conditions of approval being described in the specification.

(ii) Unless the Director determines that the essential characteristics of the brand names included in the proprietary specifications are commonly known in the industry or trade, proprietary specifications shall include a description of the particular design, functional, or performance characteristics which are required.

(iii) Where a proprietary specification is used in a solicitation, the solicitation shall contain explanatory language that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition.

(iv) The Division shall solicit sources to achieve whatever degree of competition is practicable. If only one source can supply the requirement, the procurement shall be made in accordance with Section R23-1-25.

DFCM ADMINISTRATIVE RULE R23-4-3. Suspended and Debarred Persons Not Eligible for Consideration of Award.

No person who has been suspended or debarred by the division, will be allowed to bid or otherwise solicit work on division contracts until they have successfully completed the suspension or debarment period.